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October 23, 2014

### VIA ECF

The Honorable Katherine B. Forrest,  
United States District Court,  
Southern District of New York,  
500 Pearl Street,  
New York, New York 10007.

Re: *In re Aluminum Warehousing Antitrust Litigation*, No. 13-md-  
02481 (KBF)

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Dear Judge Forrest:

I am counsel for the Goldman Sachs Defendants in the above-referenced actions and write on behalf of all Defendants to request a scheduling adjustment in view of the Motion for Leave to Amend Their Motion to Amend the Complaint (ECF No. 618) filed by the First-Level Purchasers (“FLPs”) last night. The FLPs previously sought Defendants’ consent to amend their motion for leave to amend suggesting that the changes would be limited to corrections, but after Defendants learned of the scope and the nature of the FLPs’ proposed amendments to their papers filed twelve days earlier, Defendants advised the FLPs that they would not consent.

This Court’s August 29, 2014 Order (ECF No. 159) set a briefing schedule for the FLPs’ motion for leave to amend their complaint. After receiving multiple extensions from the Court (ECF Nos. 584, 596, 599, 616), the FLPs moved for leave to amend, together with a supporting memorandum and a proposed amended complaint, on October 10, 2014. (ECF Nos. 610-611.)<sup>1</sup> Last night, the FLPs moved to substitute a new legal memorandum and a new proposed amended complaint in support of their pending

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<sup>1</sup> This Court’s August 29 Order directed Plaintiffs to file any proposed amended complaints within 21 days and Defendants to file objections within 21 days thereafter. Pursuant to extensions granted by the Court, Plaintiffs filed their proposed amended complaints 42 days after the August 29 Order and had agreed not to oppose a corresponding request from Defendants for 45 days to file their oppositions.

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motion for leave to amend. (ECF Nos. 618-621.) As those motion papers make clear, through their revised supporting memorandum and proposed complaint, the FLPs seek to change their legal theories and to add new allegations and parties. Defendants oppose that motion, and they intend to file their oppositions on an expedited basis by Friday, October 31, 2014.

The FLPs' motion to substitute a new supporting memorandum and a new proposed amended complaint puts Defendants in an untenable position. While that motion is pending, Defendants cannot proceed further with preparing their oppositions to the FLPs' motion for leave to amend. We need to know which legal memorandum and which proposed amended complaint we should be addressing in our oppositions. We therefore respectfully request that the Court vacate the current schedule for responding to the FLPs' motion for leave to amend, and that Defendants be given 45 days from the date on which the Court rules on the FLPs' motion to substitute a new supporting memorandum and a new proposed amended complaint to file their oppositions to the FLPs' motion for leave to amend. This additional time is needed to enable Defendants to prepare concise, coordinated and consolidated oppositions to the FLPs' motion for leave to amend once the Court decides whether the FLPs can amend that motion.

We also respectfully request that the same schedule apply to Defendants' oppositions to the motion for leave to amend filed by Individual Plaintiffs Mag Instruments, Agfa and Kodak. As this Court has recognized (14 Civ. 6849, ECF No. 18), it make sense for both actions to proceed on the same schedule, and Defendants expect to submit consolidated oppositions to the two motions for leave to amend.

Counsel for the FLPs and the Individual Plaintiffs have advised me that they do not oppose this requested adjustment to the briefing schedule on their motions for leave to amend.

Respectfully submitted,



Richard C. Pepperman II

cc: All counsel